

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16362 of Philippe Bosshard, pursuant to 11 DCMR § 3107.2, for a variance to allow an addition to an existing nonconforming structure (11 DCMR § 2001.3) and a variance from the minimum side yard setback requirement (11 DCMR § 405.9) to allow the construction of a dormer addition to an existing nonconforming single-family row dwelling in an R-1-B District at premises 3312 Cathedral Avenue, N.W. (Square 2118, Lot 38).

HEARING DATES: July 8, 1998, October 21, 1998, and January 20, 1999

DECISION DATE: February 3, 1999

ORDER

SUMMARY OF EVIDENCE:

At the public hearing, the Board heard testimony of the applicant and testimony in opposition to the application by Advisory Neighborhood Commission 3C (ANC) and owners of abutting property.

A. Record Evidence

The applicant's property is located at 3312 Cathedral Avenue, N.W., in the Ward 3 neighborhood of Massachusetts Heights, in the vicinity of the Washington National Cathedral. The site is Lot 38 of Square 2118, which is bounded by 33rd Street to the east, 34th Street to the west, Cathedral Avenue to the north, and Garfield Street to the south. The width and area of the lot are 33 feet and 3,130 square feet, respectively. The Surveyor's plat indicates that the site is improved with a three-story dwelling, which was constructed in 1924 of brick material.

The application concerns a rowhouse that is the middle of three attached buildings; semi-detached buildings are located on both sides of the site, at 3610 and 3614 Cathedral Avenue, N.W. The site is located in an R-1-B District, which permits matter-of-right development of single-family residential uses for detached dwellings. The lot size, width, occupancy, and side yards of the applicant's site are nonconforming, as follows:

	<u>Matter-of-Right Development in the R-1-B District</u>	<u>Applicant's Site</u>
Lot Size	Minimum of 5,000 s.f.	3,130 s.f.
Lot Width	Minimum of 50 ft.	33 ft.
Lot Occupancy	Maximum of 40%	62% (existing)
Depth of Each Side Yard	8 ft.	6 ft. and 4 ft.

B. Testimony of Applicant

The applicant testified that zoning relief is needed in conjunction with his efforts to renovate the property, which had deteriorated over the years. In 1995, the applicant engaged the services of Vivian Fernandes, AIA, of Acanthus Architects, to provide architectural drawings for the total restoration of the property. On January 23, 1996, he submitted architectural plans to the Permit Processing Division of the Department of Consumer and Regulatory Affairs (DCRA). The applicant testified that the architectural drawing submitted to DCRA clearly showed how the third-floor dormer would be constructed.

On September 12, 1996, the applicant was issued Building Permit No. B403795, to install new plumbing, upgrade the electrical components, install a new roof, and perform plaster/painting repairs. The applicant testified that, upon receipt of the building permit, the existing roof was removed because it was structurally unsound, and a new roofing structure was built in its place in accordance with the architectural plans. He stated that construction was nearly complete when a stop work order was issued following a complaint by a neighbor.

The Board for the Condemnation of Insanitary Buildings (BCIB) condemned the property and, by letter dated October 14, 1996, directed that the property be demolished or repaired within 30 days. By correspondence dated December 9, 1996, BCIB issued a final notice to the applicant, stating that BCIB had opted to cause the building to be repaired or rendered sanitary, and identifying several items in need of correction to render the premises sanitary.

By memorandum dated December 9, 1998, the Zoning Administrator's office indicated that two variances would be needed for construction of the addition at the applicant's property: (1) relief to allow an addition to an existing non-conforming structure (§ 2001.3 (a) and (c)); and (2) relief from the minimum side yard setback requirement (§ 405.9). Previously, by memorandum dated January 5, 1998, the Zoning Administrator's office had erroneously indicated that an additional variance would also be needed; that is, relief from the maximum allowable lot occupancy requirement (§ 403.2). The applicant testified that in fact no lot occupancy variance was needed because the renovations did not alter the footprint of the building and thus did not increase lot occupancy.

The applicant stated that a mistake had occurred in connection with the application for a building permit, because the subject property is an attached dwelling located in an R-1 zone, which includes side yard requirements. The architect had submitted plans that did not account for the side yard requirements when making the roofing design, and those plans were approved by DCRA. The applicant testified that the plans for the roof were approved and the construction

was consistent with the approved plans, but subsequently DCRA determined that the plans were approved in error and that the applicant should apply for zoning relief.

The applicant testified that the only change to the existing structure was the enlargement of the dormer on the rear of the property, and thus any variance relief would be due to an extant condition of the property or directly attributable to the enlargement of the dormer. He asserted that the requirements for a variance were satisfied, because (1) the subject property – an attached dwelling in an R-1 zone – is unique, (2) there was a practical difficulty associated with eight-foot side yard setbacks required in the R-1 zone when the building is only 33 feet wide, and (3) no adverse impact on the community would result from the construction of additional living space in the applicant's property. The applicant testified further that the dormer addition did not increase the lot's occupancy and thus did not increase the site's existing nonconformity. Rather, the addition of the dormer to the rear of the roof required relief from the Zoning Regulations because the dormer roof was six feet from the adjacent property on one side and four feet from the adjacent property on the other side.

The applicant stated that attached dwellings, by their very existence, violate the eight-foot side yard requirement of the R-1-B District. He testified that the addition would have little or no negative impact on the community, but indicated that some people in the neighborhood were opposed to the addition based on their belief that the property might be used as a rooming house in the future. He also noted that zoning relief from the side yard requirement to construct a one-story addition adjacent to the existing kitchen and dining area was approved on March 16, 1982 for the owners of the adjacent property at 3310 Cathedral Avenue, N.W., in BZA Application No. 13518.

C. Position of Party ANC

By resolution dated December 17, 1998, ANC 3C voted unanimously to recommend denial of the requested variance and to ask the Board to direct the applicant to remove the illegally constructed addition. The ANC stated that its rationale for recommending denial included the following:

- The ANC tends to look with disfavor upon requests for zoning relief where the application is about legitimizing construction that is illegal and not permitted, because in such instances, the integrity of the regulatory structure, including the Zoning Regulations, is jeopardized;
- The applicant has not met any of the criteria set forth in 11 DCMR for a variance; and
- There is nothing truly exceptional or extraordinary about the applicant's property, which is similar to others in the area, and there is no practical difficulty to the owner except a perceived want for the addition and the need now to legitimize the construction.

D. Witnesses and Submissions in Opposition to Application

The Board also received testimony from Rosalyn Doggett, a member of ANC 3C, who stated that the requested variance should be denied because the applicant did not prove the uniqueness of his property or a resultant practical difficulty. She disputed the applicant's claims that he relied on DCRA to tell him that he needed a variance and consequently he is not at fault. According to Ms. Doggett, the applicant already knew in 1996 that he was in violation of zoning and building regulations, because the ANC was aware of, and tried to help correct, illegal construction by the applicant since 1993, when original complaints were made. Further, Ms. Doggett noted that the dormer addition violated side yard requirements because the house itself is in violation, but argued that it is possible to make a dormer addition narrower than the house.

The Board received letters of opposition to the proposed addition from owners of property in the vicinity of the applicant's site. The letters alleged that the subject building has been kept in a decrepit condition, and that the grounds of the property have not been maintained. Further, the letters alleged that the applicant was not a responsible homeowner but had flouted the District's regulations for 10 years, and apparently intended to use the building as a boarding house.

The owners of a property adjacent to the subject site, Rona and Allan Mendelsohn, who reside at 3310 Cathedral Avenue, N.W. (the abutting property to the east), also opposed the application. Mr. Mendelsohn testified that the applicant has been an absentee owner for more than 10 years, and that the site has been totally vacant and in a state of continuing deterioration for most of those years. He contended that the applicant had requested the variance to increase the living space within the building to accommodate students and roomers, and thus increase the market value of the property.

Mr. Mendelsohn testified that the necessary requirements for a variance were not met, because the property was not unique, the applicant did not need a third floor and thus would not suffer any undue hardship without a variance, and there was no practical difficulty. According to Mr. Mendelsohn, a variance would create detrimental impact on the neighborhood, because the gables violate the eight-foot side yard requirement and are larger than the original gables. He recommended that the applicant be required to restore the front of his house to a proper condition and to clean up both the front and rear yards.

Mr. Mendelsohn also stated that he had offered the applicant a covenant running with the land that would prevent use of the property as a rooming house, but the applicant refused to sign it. Mr. Mendelsohn acknowledged that the covenant provided that all objections concerning violations of the side yard requirements arising from construction on the property would be withdrawn once the covenant was recorded and the applicant agreed not to use the property as a rooming house.

FINDINGS OF FACT:

1. The applicant's property is a rowhouse, 33 feet wide, located in an R-1-B District. It was constructed prior to the adoption of the Zoning Regulations and is a nonconforming use that does not comply with matter-of-right development in the R-1-B zone.
2. Because the applicant's lot is substantially smaller (by 1,870 square feet) than the minimum lot size called for in the R-1-B District, the nonconforming lot cannot meet the lot size, width, or occupancy requirements or the side yard set back requirements of the R-1-B zone. The existing building occupies 22 percent more of the lot than the Zoning Regulations allow. These are inherent difficulties with the applicant's site. The rear addition does not increase the existing nonconformity.
3. The applicant sought zoning relief in conjunction with his renovation of the property, which had deteriorated. The condition of the property has generated many complaints from neighbors and led to an order by the Board for the Condemnation of Insanitary Buildings condemning the property and directing the applicant to repair the building and render it sanitary.
4. Some of the applicant's neighbors opposed the request for a variance out of concern that the applicant's property might be used as a rooming house in the future.
5. Based on architectural drawings for the renovation of the property, the applicant received Building Permit No. B403795 on September 12, 1996 to install new plumbing and a new roof, upgrade the electrical components, and perform plaster/painting repairs. Thereafter, the existing roof was removed because it was structurally unsound, and a new roofing structure was built in its place in accordance with the architectural plans. The construction work was largely complete when a stop work order was issued.
6. The stop work order was issued after the Zoning Review Branch determined that two variances were needed for construction of an addition at the applicant's property: (1) relief to allow an addition to an existing non-conforming structure (§ 2001.3 (a) and (c)); and relief from the minimum side yard set back requirement (§ 405.9). The applicant was mistakenly issued a building permit by DCRA even though his approved plans did not account for the side yard requirement in the R-1-B zone. The stop work order cited the need for zoning relief.
7. None of the witnesses opposing the application claimed that the light and air available to neighboring properties would be unduly affected, that the privacy and enjoyment of neighboring properties would be unduly compromised, or that the applicant's addition, together with the original building, would substantially intrude visually on the neighboring properties. Nor did the Board receive testimony asserting that the applicant's building materials were incompatible with the character of the neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance from Subsections 2001.3 (a) and (c) of the Zoning Regulations to allow an addition to an existing nonconforming structure and a variance from the minimum side yard setback requirement set forth in Subsection 405.9 to allow the construction of a dormer addition to an existing nonconforming single-family row dwelling in an R-1-B zone. Granting such variances requires a showing through substantial evidence that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape, or topographical conditions. D.C. Code § 5-424(g)(3). Further, the Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose, and integrity of the Zoning Regulations and Map.

With reference to Subsection 2001.3, the Board concludes that the existing building is nonconforming and cannot comply with the lot occupancy requirement of the R-1-B zone. The addition that is the subject of the variance request was constructed on the third level of the building, maintaining the structure's existing building lines. Therefore, the addition does not increase or extend any existing nonconforming aspect of the structure and does not create a new nonconformity.

The Board concludes that the applicant has met the tests for relief from the Zoning Regulations. The applicant's property is unique in that it is an attached dwelling on a small lot in an R-1 zone, where single-family detached dwellings predominate. The rowhouse was constructed prior to the enactment of the 1958 Zoning Regulations on a lot that cannot meet the zoning requirements and is therefore nonconforming. A practical difficulty exists at the site with respect to the eight-foot side yard setbacks required in the R-1 zone even though the building is only 33 feet wide. These on-site conditions are inherent in the property.

The rear addition does not increase the site's nonconformity, and does not adversely affect the light, air, privacy, or visually intrude on nearby properties. The Board concludes that the requested relief would alleviate conditions related to the property that make strict compliance with the Zoning Regulations practically difficult. The addition does not impair the intent, purpose, or integrity of the Zoning Regulations and Map. Nor would the construction of additional living space in the applicant's property result in an adverse impact on the community.

The site is zoned to accommodate single-family residential use. It is speculative to assume that the site would be used for any other purpose. Matter-of-right uses permitted in the R-1-B District are identified in Sections 201-204 of the Zoning Regulations, and do not include rooming houses. Moreover, this variance does not permit the use of this property as a rooming house. Thus, the addition does not impair the intent, purpose, or integrity of the Zoning Regulations and Map.

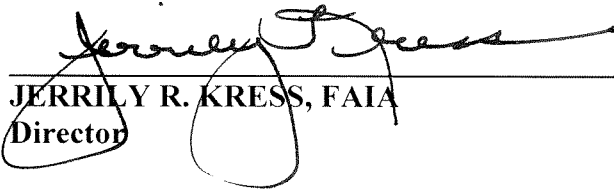
The Board accorded ANC 3C the "great weight" to which it is entitled. However, the Board is not persuaded by the ANC's reasoning underlying its resolution, especially with respect to the uniqueness of the applicant's attached dwelling located in an R-1 zone and the practical difficulty associated with eight-foot side yard setbacks on a property 33 feet wide. Because the requested variances are appropriate, this case is not an "application ... about legitimizing construction that is illegal and not permitted," and thus the variances would not jeopardize the integrity of the regulatory structure, including the Zoning Regulations.

The Board concludes that the applicant has met the burden. It is hereby **ORDERED** that the application be **GRANTED**.

VOTE: 4-0 (Sheila Cross Reid, Betty King, Jerry H. Gilreath, and Anthony J. Hood to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director

JUL 27 1999

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF DC LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3101.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THE ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16362

As Director of the Office of Zoning, I hereby certify and attest that on JUL 27 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Craig Ellis (Attorney for Applicant)
1436 Fenwick Lane
Silver Spring, MD 20910

Vivian Fernandes
2930 Macomb Street, N.W.
Washington, DC 20008

Allan and Rona Mendelsohn
3310 Cathedral Avenue, N.W.
Washington, DC 20008

Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, DC 20008

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director